

June 12, 2001  
RE: IO-01-87

You have inquired whether you may accept a gift of more than nominal value from a donor who is not currently a controlled donor, but was a controlled donor when you met him in your official capacity. You also advised that the donor may become a controlled donor at some point in the future. You described the facts as follows:

You are currently the assistant to the inspections division manager in the Department of Inspections and Permits. In 1999, you were directed, along with another inspector, to investigate allegations that a property owner was conducting home improvement work without a permit. You investigated the allegations and concluded that the work was of such a minor nature that a permit was not required. The matter was closed. However, you became social friends with the property owner as a result of this meeting. The property owner is an elderly person with no other family than a spouse who lives in an assisted living facility. Your spouse has met the property owner and you have visited the property owner at his home on several occasions.

The property owner owns three separate parcels of land in the county. He anticipates applying for a subdivision for one of these properties, although the application has not yet been filed. The subdivision if approved, will enable him to sell the two existing homes located on one property, as two separate parcels. He has no plans to make improvements to the existing structures but plans to sell them once the subdivision is approved. Therefore, it is unlikely that his properties will be subject to the review by your department.

The property owner, who is currently recovering from a stroke, recently asked you to choose one of these properties as a gift from him to you.

The Public Ethics Law, §3-106(b) prohibits an employee from accepting a gift of more than nominal value (\$25 or less) from a controlled donor. In this case, a controlled donor would include a person who is engaged in activities that are regulated or controlled by the county. The property owner has indicated an intent to file an application for a subdivision but has not yet filed. If and when the application is filed, the property owner will be a controlled donor with respect to employees working in the Department of Planning and Zoning. However, since the property owner does not intend to make improvements to the property, it is unlikely that your department will have any responsibilities with respect to the subdivision. Therefore, the donor is not a controlled donor with respect to you.

Section 3-104(a), which prohibits an employee from using the prestige or authority of the employee's position for the employee's private gain, has been interpreted by the commission to prohibit the receipt of a gifts in exchange for the performance of an employee's official duties. Since this gift offer was made to you almost two years after your official business with the donor, it does not appear to be connected to the decision you made as to the home improvements in 1999. It does not appear to be related to any likely future action on your part.

For these reasons, you may accept the gift of property from this donor. However, if the

facts above stated are not correct, or are incomplete in some relevant detail, you should advise the ethics commission. Because this donor is elderly and in frail health, he is in a vulnerable position and his decisions may be suspect. As a precaution, I suggest that you ask your friend to consult with a lawyer or other trusted counselor about this gift before you accept it.

Thank you for your inquiry. If you have any questions, please call any time.

Sincerely,

Betsy K. Dawson  
Executive Director